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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,172	11/26/2003	James A. McEwan	HOET-16	5747
52450	7590	07/23/2009	EXAMINER	
KRIEG DEVault LLP ONE INDIANA SQUARE SUITE 2800 INDIANAPOLIS, IN 46204-2079			TRIEU, THAI BA	
		ART UNIT		PAPER NUMBER
		3748		
		MAIL DATE		DELIVERY MODE
		07/23/2009		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* JAMES MCEWAN

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Application No. 10/723,172  
Technology Center 3700

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Mailed: July 23, 2009

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Before TOI JOHNSON *Review Paralegal*  
JOHNSON, *Review Paralegal.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on July 22, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

**SUPPLEMENT EXAMINER'S ANSWER**

The Supplemental Examiner's Answer mailed April 9, 2007, is deficient, because it was not signed by the Technology Center Group Director or his designee. Section 1207.05 Of the Manual of Patent Examining Procedure (MPEP) (Eighth Edition, Rev. 3, August 2005) states that “[e]very supplemental examiner's answer must be approved by a Technology Center (TC) Director or designee.”

The Examiner should vacate the Supplemental Examiner's Answer dated April 9, 2007, re-mail with the appropriate required signature (Technology Center Director or designee). The Examiner, if appropriate, may re-mail the Supplemental Examiner's Answer under a PTOL-90 cover letter, stating that it is being re-mailed per this Order Returning Undocketed Appeal, for purposes of correcting the record (Director's signature necessary on signature page). Further stating that no action is required by the Appellant.

**REOPEN PROSECTION**

Appellant filed an Agreement to End Appeal and Reopen Prosecution dated April 23, 2007 and Miscellaneous Letter mailed January 23, 2009. There is no indication on the record that the Examiner has considered the above “Agreement to End Appeal and Reopen Prosecution” and “Miscellaneous Letter” noted above.

**CONCLUSION**

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

1) vacate the Supplemental Examiner's Answer dated April 9, 2007,  
re-mail with the appropriate required signature (Technology Center Director  
or designee) as identified above;

2) consider the Agreement to End Appeal and Reopen Prosecution  
and Miscellaneous Letter as required; and

3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the  
Board of Patent Appeals and Interferences at 571-272-9797.

KRIEG DEVAULT LLP  
ONE INDIANA SQUARE  
SUITE 2800  
INDIANAPOLIS, IN 46204-2079